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10/042,841	01/09/2002	Philip C. Hwang	RPC 0598 PUS	7374

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Konstantine J. Diamond
4010 East 26th Street
Los Angeles, CA 90023

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary

Application No.

10/042,841

Applicant(s)

HWANG, PHILIP C.

Examiner

Robin Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 6.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

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DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 59-84 have been renumbered 1-26.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11, 13, 14, and 22-25 of U.S. Patent No. 5,992,673. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container having two lid portions hinged together for cooperative movement with respect to the container body and the lid portions being detachable from the container body. The patent claims are silent regarding an angle at which detachment occurs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the more broad language of "detachable" as set forth in the patent claims to negate a specific angle of inclination for removal of the lid portions.

5. Claims 1-24 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 and 4-32 of U.S. Patent No. 6,036,049. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container having two lid portions hinged together for cooperative movement with respect to the container body and the lid portions being detachable from the container body. The patent claims teach the lid portions detach from the container body at an angle less than 180°. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a range of angles for detachment of the lid portions from the container body (i.e., provide more broad terms).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3,8,10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by
Crate (US 3,126,120).

See figs. 1-5.

8. Claims 1,2,4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by
Jamison (US 5,673,791).

9. Claims 1,2, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by
Robertson (US 5,146,650).

See col. 3, lines 53-65.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 13,14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Robertson in view of Webb (US 4,685,567).

Robertson teaches the claimed container except for a fastener.

Webb teaches a container having a fastener 14,39,41 for securing a lid to the container
body.

It would have been obvious to one of ordinary skill in the art at the time the invention was
made to apply the teaching of a fastener to the container of Robertson. Doing so maintains the
lid in a closed position with the container body.

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12. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb.

Webb teaches the claimed container except is not explicit about removal of the lid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide removal lid portions by removing the pins of the container of Webb. Doing so allows for removal of the lid from the container body to allow for easier access and nesting of plural containers.

Allowable Subject Matter

13. Claims 18,6,7,9,11,19-21 appear to be allowable if rewritten or amended to overcome the rejections under non-statutory double patenting set forth in this Office action.

14. Claims 24-26 appear to be allowable if rewritten to overcome the rejection(s) non-statutory double patenting set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various containers similar to that disclosed and/or claimed are cited for their disclosures.

16. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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17. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

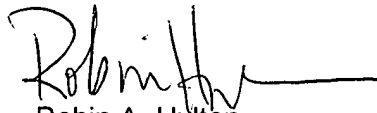
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
December 15, 2002


Robin A. Hylton
Patent Examiner
GAU 3727